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Criminal Law--Plea of Guilty--"Jurisdictional Facts"

J. Mc K.

West Virginia University College of Law

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the interest of the state in the family relationship and allows the domiciliary state to attack the validity of a foreign divorce decree which would seem to effect a check upon those states which are lax in the enforcement of jurisdictional requirements. The decision in the principal case would seem to be in line with the modern authority of the second Williams case which gives the domiciliary state the right to make inquiry into the jurisdiction of the divorce granting state.

H. S. S., Jr.

CRIMINAL LAW—PLEA OF GUILTY—"JURISDICTIONAL FACTS."—*D* was indicted for violation of the Federal Bank Robbery Act. Upon arraignment *D* entered a valid plea of guilty to the offense charged in the indictment, and judgment was entered by which he was incarcerated in the penitentiary. *D* filed a motion to vacate this judgment which was denied. *Held*, denial of motion to vacate judgment affirmed. A plea of guilty admits all essential allegations, thus relieving the government of the burden of proof, and a court which has jurisdiction of the subject matter and of the defendant has power to enter on such plea a judgment unassailable by collateral attack without conducting an independent inquiry to determine so-called jurisdictional facts. *United States v. Hoyland*, 264 F.2d 346 (7th Cir. 1959).

The principal case expressly states that it overrules an earlier decision by the same court in *La Fever v. United States*, 257 F.2d 271 (7th Cir. 1958). The facts of this case, insofar as applicable to this discussion, are similar to those of the principal case, as both cases involved an appeal from a denial of a motion to vacate judgment based on a plea of guilty. The *La Fever* case held that a plea of guilty admits all non-jurisdictional facts contained in an indictment, but does not admit or waive jurisdictional facts.

These cases present a problem which has plagued courts for years. The decision of the principal case along with that of the *La Fever* case illustrates a situation which causes considerable confusion and may lead to possible misapplication of justice.

Simply stated, the problem is that courts misuse the term "jurisdictional facts" by failing to recognize that there are two distinct categories of facts pertaining to jurisdiction. Generally, as commonly used the term merely refers to facts of a jurisdictional nature. This definition, however, is incomplete and misleading since the

term "jurisdictional facts" is a technical term designating one of the categories in which facts of this nature may be classified. *Abraham v. Homer*, 102 Okla. 12, 226 P. 45 (1924). Facts pertaining to a court's jurisdiction are of two types: "jurisdictional facts" and "quasi-jurisdictional facts." *Abraham v. Homer, supra*.

"Jurisdictional facts" are those facts dealing with the three essential elements of a court's jurisdiction, namely: of the subject matter, of the person, and of the judgment rendered. *City of Phoenix v. Rodgers*, 44 Ariz. 40, 34 P.2d 385 (1934).

"Quasi-jurisdictional facts" is also a technical phrase. It has never been widely used and is apparently growing obsolete from lack of use. A revitalization of the term would seem to offer much toward the clarification and enlightenment of this hazy area. "Quasi-jurisdictional facts" had been stated to be those facts which do not go to the subject matter or to the parties. *Noble v. Union River Logging R.R. Co.*, 147 U.S. 165 (1893). Another case defines "quasi-jurisdictional facts" as facts which are not "jurisdictional facts" and which do not constitute a part of the cause of action, but which are necessary to set the judicial wheels in motion and entitle the court to proceed with the exercise of admitted jurisdiction. *Abraham v. Homer, supra*.

The above definitions of "quasi-jurisdictional facts" are somewhat cumbersome and not sufficiently precise, but they do point out that "quasi-jurisdictional facts" are to be distinguished from "jurisdictional facts." Perhaps a better terminology for these terms would be to designate "jurisdictional facts" as the primary facts of jurisdiction, and "quasi-jurisdictional facts" as the secondary facts of jurisdiction.

From the above definition of "jurisdictional facts" it will be seen that when a court unwittingly uses the term without realizing its technical significance, the court may convey a meaning which it does not intend. This is the problem presented by the principal case and the *La Fever* case.

For our purposes, the secondary facts of jurisdiction ("quasi-jurisdictional facts") are the essential allegations which must of necessity be pleaded in an indictment. *United States v. Hoyland, supra* at 352. These secondary facts must be clearly distinguished from the primary facts of jurisdiction, *i.e.*, jurisdiction of subject matter, person, and judgment rendered (primary facts or "jurisdictional facts") are clearly distinguishable from essential allegations of the indictment (secondary facts or "quasi-jurisdictional facts").

The particular language of the principal case here being criticized is the court's use of the term "so-called jurisdictional facts." *United States v. Hoyland*, *supra* at 352. By "so-called jurisdictional facts" it will be deduced from the court's opinion that the court is referring to the secondary facts of jurisdiction ("quasi-jurisdictional facts".) But, depending upon the interpretation of the ambiguous word "so-called" the literal meaning of the court's language may or may not announce the same proposition it is attempting to overrule. This confusion could be avoided by recognition of the technical definitions of primary jurisdictional facts and secondary jurisdictional facts. In the principal case, if the word "secondary" is substituted for "so-called" it is then clear that the court intends to hold the following rule: a judgment is unassailable by a collateral attack based on questions involving secondary facts of jurisdiction.

The *La Fever* case uses this sentence: "... [A] plea of guilty, while admitting all non-jurisdictional facts contained in the indictment, cannot be taken as an admission or waiver of *jurisdictional facts*." *La Fever v. United States*, *supra* at 272. (Emphasis added.) This is the statement which the principal case expressly overrules. *United States v. Hoyland*, *supra* at 351. If the technical definition of the term "jurisdictional facts" is recognized then the sentence states that a plea of guilty cannot be taken as an admission or waiver of the *primary facts of jurisdiction*. Such technical interpretation is in perfect harmony with the principal case, which purports to overrule it.

The cases can be reconciled only by realizing that the *La Fever* opinion did not recognize that "jurisdictional facts" is a technical term. Obviously, the *La Fever* case intended the term to mean "quasi-jurisdictional facts" (secondary facts of jurisdiction), for if "quasi-jurisdictional facts" is substituted for "jurisdictional facts" then *La Fever* is contra to the principal case, and the express intent to overrule is accomplished. The difficulty presented by the two decisions is the court's apparent failure to realize the technical definitions of the terms employed, and because of this the overruling case technically agrees with the case overruled. This all leads to a difficult and highly confusing situation. Since both opinions were rendered by the same court, it is understandable that the same oversight is present in both decisions.

The seventh circuit court deciding the principal case is not the only court failing to distinguish between the primary and second-

ary facts of jurisdiction. A number of cases state the same rule as that attempted by the principal case, but use a different approach. *E. g., Hornbrook v. United States*, 216 F.2d 112 (5th Cir. 1954); *United States v. Gallagher*, 183 F.2d 342 (3rd Cir. 1950); *Walker v. United States*, 154 F. Supp. 648 (D. N.J. 1957). These cases say that a plea of guilty admits all essential allegations and waives all non-jurisdictional defects or defenses. The above cases all use the term "non-jurisdictional" to indicate a waiver of "quasi-jurisdictional facts," but not "jurisdictional facts." The *La Fever* decision was based on such a statement of the rule. *La Fever v. United States*, *supra* at 272. See *Martyn v. United States*, 176 F.2d 609 (8th Cir. 1949).

By holding that a plea of guilty admits all essential allegations in the indictment (secondary facts of jurisdiction), the court in the principal case is on firm ground, providing of course that the plea is made without coercion and in full appreciation of the consequences. *United States v. Gallagher*, 183 F.2d 342 (5th Cir. 1950). By pleading guilty, a defendant does not in effect confer jurisdiction upon the court since such a plea merely admits secondary facts of jurisdiction and *not* primary facts of jurisdiction; so a defendant cannot in any manner give to a court jurisdiction which it does not already possess. That is to say, a plea of guilty is not an admission or waiver of primary facts of jurisdiction which give the court power to render judgment in a particular case, but is merely an admission or waiver of the secondary facts of jurisdiction alleged in the indictment.

An admission of guilt then becomes a bar to a collateral attack on a judgment when the attack is based on secondary facts of jurisdiction, but does not bar a collateral attack on a judgment when such attack is based upon primary facts of jurisdiction. *White v. Taylor*, 164 F.Supp. 433 (M.D. Pa. 1958).

It is a basic tenet of the judicial system of the United States that a judgment by a court without competent jurisdiction to render such judgment is void and a mere nullity. *Jude v. United States*, 262 F.2d 117 (10th Cir. 1958). Jurisdiction as used in this statement refers to the primary facts of jurisdictional requirements.

This problem has been increased because of the natural tendency to use the word "jurisdictional" as an adjective when referring to facts which pertain to jurisdiction. This non-technical use of the word combined with judicial oversight of the technical distinctions between the two types of facts results in this highly confusing

situation. One solution would be the revival of the term "quasi-jurisdictional facts" as distinguished from "jurisdictional facts." However, to continue with the term "jurisdictional facts" would not solve the problem of confusion resulting when the term is not recognized for its technical definition. Thus, the problem would continue as it exists now. Probably, a better solution would be to define facts pertaining to jurisdiction as either primary or secondary. This would alleviate the semantic aspects of the problem and at the same time point out that there are different levels of facts concerning jurisdiction.

J. Mc K.

EVIDENCE—ADMISSIBILITY OF EVIDENCE OF SEPARATE INDEPENDENT CRIMES.—The defendant was accused of poisoning her nine-year-old daughter for collection of life insurance and other financial benefits. Testimony of witnesses showing that the defendant, for a money motive and in a like manner, had poisoned two previous husbands and her mother-in-law, and that the defendant had collected a substantial amount of money from the death of each, was admitted to show common motive, plan or scheme. Defendant brought error. *Held*, generally, on a prosecution for a specific crime, evidence of a wholly independent one is irrelevant and inadmissible, however, it is admissible to show the commission of other crimes if it is to show motive, plan, or scheme. Judgment affirmed. *Lyles v. State*, 109 S.E.2d 785 (Ga. 1959).

The rule today is that evidence of a prior conviction of an infamous crime which would have rendered a witness incompetent at common law, or of a crime involving great moral turpitude, may be admitted to impeach the credibility of a witness. *United States v. Montgomery*, 126 F.2d 151 (3d Cir. 1942). *Fuller v. State*, 147 Ala. 35, 41 So. 774 (1906). However, this is not the law when we are dealing with a defendant rather than a witness in a criminal trial.

There is a well established general rule that proof in a criminal prosecution which shows or tends to show the accused is guilty of committing other offenses at other times, even if they are of the same nature as the one charged, is incompetent and inadmissible for the purpose of showing the commission of the crime charged. *Guilbeau v. United States*, 288 Fed. 731 (5th Cir. 1923).

Like most general rules the above has certain well recognized limitations and exceptions. *Sykes v. State*, 112 Tenn. 572, 82 S.W. 185 (1904). Evidence may be introduced of other crimes if it shows